

## **REMARKS**

### **I. Introduction**

Claims 8-14 are now pending in the present application. Claims 8-14 have been amended. Applicants hereby respectfully request further examination and reconsideration of the application.

Applicants note with appreciation the acknowledgment of the claim for foreign priority, and the indication that all certified copies of the priority documents have been received from the International Bureau.

Applicants thank the Examiner for considering the previously filed Information Disclosure Statement, PTO 1449 paper and cited references.

### **II. Objection to Claims 9-14**

Claims 9-14 were objected to because of informalities. Claims 9-14 have been amended in accordance with the Examiner's suggestions to eliminate the informalities. Withdrawal of the objection to claims 9-14 is respectfully requested.

### **III. Rejection of Claims 8, 9, 13 and 14 under 35 U.S.C. §102(e)**

Claims 8, 9, 13 and 14 were rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent Application Publication No. 2004/0011582 ("Aoki"). Applicants respectfully submit that the rejection should be withdrawn for at least the following reasons.

In order to reject a claim under 35 U.S.C. §102(e), the Office must demonstrate that each and every claim feature is identically described or contained in a single prior art reference. (See Scripps Clinic & Research Foundation v. Genentech, Inc., 18 U.S.P.Q.2d 1001, 1010 (Fed. Cir. 1991)). Still further, not only must each of the claim features be identically described, an anticipatory reference must also enable a person having ordinary skill in the art to practice the claimed subject matter. (See Akzo, N.V. v. U.S.I.T.C., 1 U.S.P.Q.2d 1241, 1245 (Fed. Cir. 1986)). To the extent that the Examiner may be relying on the doctrine of inherent disclosure, the Examiner must provide a "basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent

characteristics necessarily flow from the teachings of the applied art.” (See M.P.E.P. § 2112; emphasis in original; see also Ex parte Levy, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Int’f. 1990)). Thus, the M.P.E.P. and the case law make clear that simply because a certain result or characteristic may occur in the prior art does not establish the inherence of that result or characteristic.

Claim 8 has been amended to clarify the claimed subject matter, i.e., amended claim 8 recites, in relevant parts, “**a first acceleration sensor mechanism situated on a bumper, wherein the first acceleration sensor mechanism is situated between a crossmember of the bumper and a fascia of the bumper, and wherein the first acceleration sensor mechanism includes at least one acceleration sensor attached to the fascia of the bumper.**” In contrast, Aoki does not disclose or suggest **an acceleration sensor mechanism that includes at least one acceleration sensor attached to the fascia of a bumper.**

For at least the foregoing reasons, Aoki does not anticipate claim 8 and its dependent claims 9, 13 and 14. Accordingly, withdrawal of the anticipation rejection is requested.

#### IV. **Rejection of Claims 10 and 11 under 35 U.S.C. §103(a)**

Claims 10 and 11 were rejected under 35 U.S.C. §103(a) as being unpatentable over Aoki in view of U.S. Patent Application Publication No. 2002/0180596 (“Mattes ‘596”). Applicants respectfully submit that the rejection should be withdrawn for at least the following reasons.

In rejecting a claim under 35 U.S.C. §103(a), the Examiner bears the initial burden of presenting a *prima facie* case of obviousness. In re Rijckaert, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). To establish a *prima facie* case of obviousness, the Examiner must show, *inter alia*, that there is some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify or combine the references, and that, when so modified or combined, the prior art teaches or suggests all of the claim limitations. M.P.E.P. §2143. In addition, as clearly indicated by the Supreme Court, it is “important to identify a reason that would have prompted a person of ordinary skill in the relevant field to [modify] the [prior art] elements”

in the manner claimed. See KSR Int'l Co. v. Teleflex, Inc., 82 U.S.P.Q.2d 1385 (2007). In this regard, the Supreme Court further noted that "rejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." Id., at 1396. To the extent that the Examiner may be relying on the doctrine of inherent disclosure in support of the obviousness rejection, the Examiner must provide a "basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristics necessarily flow from the teachings of the applied art." (See M.P.E.P. § 2112; emphasis in original; see also Ex parte Levy, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990)).

Claims 10 and 11 ultimately depend from claim 8. As noted above, Aoki fails to anticipate claim 8. In addition, Mattes '596 does not overcome — and is not asserted to overcome — the critical shortcomings of Aoki as applied against claim 8. Accordingly, the overall teachings of Aoki and Mattes '596 fail to render obvious dependent claims 10 and 11. Withdrawal of the obviousness rejection is respectfully requested.

**V. Rejection of Claim 12 under 35 U.S.C. §103(a)**

Claim 12 was rejected under 35 U.S.C. §103(a) as being unpatentable over Aoki in view of U.S. Patent Application Publication No. 2002/0175499 ("Mattes '499"). Applicants respectfully submit that the rejection should be withdrawn for at least the following reasons.

Claim 12 depends from claim 8. As noted above, Aoki fails to anticipate claim 8. In addition, Mattes '499 does not overcome — and is not asserted to overcome — the critical shortcomings of Aoki as applied against claim 8. Accordingly, the overall teachings of Aoki and Mattes '499 fail to render obvious dependent claim 12. Withdrawal of the obviousness rejection is respectfully requested.

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**Conclusion**

In view of the foregoing, it is respectfully submitted that pending claims 8-14 are in condition for allowance. All issues raised by the Examiner having been addressed, an early and favorable action on the merits is respectfully requested.

Respectfully submitted,

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